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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Policies and Rules Regarding) MM Docket Nos.
Minority and Female Ownership of) 94-149 and 91-140
Mass Media Facilities)

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To: The Commission

COMMENTS OF KM COMMUNICATIONS, INC.

KM Communications, Inc. ("KM"), by its counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits these comments in response to the Notice of Proposed Rulemaking in the above captioned proceeding.¹ In the NPRM, the Commission requested comment on ways to provide women and minorities with greater opportunities to participate in the mass media industry. See NPRM at ¶ 1. Specifically, the Commission requested comment on how its rules and policies might be modified to increase the access of women and minorities to capital, as a method of facilitating their increased ownership of mass media facilities, and thereby increasing diversity of programming. See NPRM at ¶ 9. KM supports the Commission's tentative conclusions and suggestions for developing an incubator program, and for modifying the rules governing attribution of ownership interests.

¹ Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, MM Docket Nos. 94-149 and 91-140, Notice of Proposed Rulemaking, FCC 94-323 (released January 12, 1995) ("NPRM"); see also Order Granting Extension of Time for Filing Comments and Reply Comments, DA 95-761 (released April 7, 1995) (extending date for filing comments to May 17, 1995).

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I. Introduction and Background.

KM, which is based in Skokie, Illinois, is 100% owned by Myoung Hwa Bae, a woman who qualifies as a minority under the Commission's Rules by virtue of her Asian heritage. Therefore, KM would benefit from any new or modified rules or policies which provide greater opportunities for female and minority participation on the mass media industry. KM currently is the licensee of four Low Power Television ("LPTV") stations,² and has pending twelve applications for construction permits for new full service television stations.

KM asserts that the reasoning supported by the Supreme Court in Metro Broadcasting³, that there is a nexus between minority ownership of mass media properties and diversity of programming content, logically extends to female ownership of mass media properties. See Metro Broadcasting at 569-600. Therefore, KM supports modification of the Commission's Rules to provide greater opportunities for female ownership in mass media.

KM agrees with the Commission that minorities and women may be at an economic disadvantage when attempting to establish ownership of mass media properties, due to more limited access to capital. See NPRM at ¶ 9. To remedy this disadvantage, KM encourages the Commission to initiate an incubator program, which would directly address the lack of minority and women ownership of mass media properties. The limitation of an incubator program to women- and minority-owned businesses, and excluding small businesses, would

² W04CK and WOCK-LP, Chicago, Illinois; WSKC-LP, Atlanta, Georgia; and WMKE-LP, Milwaukee, Wisconsin.

³ Metro Broadcasting, Inc. v. F.C.C., 497 U.S. 547 (1990).

further the Commission's goal of advancing women and minority ownership. See NPRM at ¶ 20.

KM supports the proposed modification of the Commission's rules governing the attribution of ownership interests, see NPRM at 26, which would allow women- and minority-owned businesses to more easily attract outside investors and capital, and thereby encourage greater women and minority ownership of mass media. Finally, KM supports relaxed radio local ownership limits for minority-controlled entities.

II. Development of an Incubator Program Will Facilitate Women and Minority Ownership of Mass Media Properties.

In the NPRM, the Commission proposed to initiate an incubator program which would allow non-minority broadcast and cable owners relief from certain regulatory restrictions, such as multiple ownership rules, in exchange for sharing "their talent, experience and financial resources" with women and minorities attempting entry into the mass media industry. NPRM at ¶¶ 15-24.

KM supports the Commission's proposal to initiate an incubator program. KM's support for this program is based in part on studies which have shown that women and minorities face financial barriers which non-minorities do not face when attempting to raise capital, or conduct a business.⁴ An incubator program, especially a program in which the incubator would be required to offer not only financial assistance but technical and other

⁴ NPRM at ¶¶ 11-13; see also Robert E. Suggs, Rethinking Minority Business Strategies, 25 Harv. C.R.-C.L. L. Rev. 101, 107-108 (1990)(discussing economic data related to the conduct of business by black-owned firms).

resources, may well assist in remedying this condition.

KM asserts that the incubator program should be limited to women- and minority-owned businesses. It has been demonstrated that women and minorities are statistically under-represented in mass media ownership, see NPRM at ¶¶ 5-6, and therefore have the greatest need for assistance in order to achieve a representative presence in the industry. In Metro Broadcasting, the Supreme Court supported the finding of a nexus between minority ownership and diversity of programming. See Metro Broadcasting at 569-600. KM asserts that this nexus logically extends to ownership by women, a similarly under-represented group. Furthermore, since minority mass media owners have established a pattern of providing programming of interest to minorities, see Metro Broadcasting at 580 n.31, KM suggests that women who own and control mass media properties would similarly provide programming of interest to women. Based on these findings, KM asserts that greater diversity in programming -- the Commission's stated purpose in initiating an incubator program -- would be promoted by the establishment of an incubator program that increases the participation of women and minorities in the mass media industry.

In contrast, the nexus between minority and female ownership and diversity of programming does not extend to small businesses. KM suggests that small businesses do not have particular common interests that differ significantly from the interests of larger businesses, such that diversity of programming would be encouraged by increased ownership by small businesses. More importantly, and in contrast to minority ownership, neither Congress nor the Commission has demonstrated that increased ownership of mass media by small businesses would promote diversity in programming. KM therefore agrees with the

Commission's tentative conclusion that limiting the proposed incubator program to women and minorities would produce the maximum benefits. See NPRM at ¶ 17.

III. Structure of the Incubator Program.

KM supports the establishment of an incubator program that would encourage women and minority ownership of cable television, LPTV, wireless cable and other mass media properties, as well as full service television and radio stations. See NPRM at ¶ 18. As previously stated, the Commission's purpose in proposing the implementation of an incubator program was to increase minority ownership of mass media properties. Broadening the types of media to which the program applies would promote this stated goal, due to the greater number of mass media properties covered by the program, as well as the potentially lower investment that may be required for such properties. A woman- or minority-owned business also may be able to gain experience by operating one type of mass media, for which a lower investment may be required, and then applying this experience to other types of mass media properties.

Similarly, placing fewer restrictions on the incubator and the incubatee would increase participation in the incubator program, thereby promoting diversity of programming. See NPRM at ¶ 20. Therefore, KM asserts that no threshold limit should be placed on the net worth of prospective investors that may be willing to serve as incubators. Any such limits would have the effect of restricting the pool of potential incubators, and would reduce the opportunities for women or minority participation in the incubator program.

The Commission also inquires whether an incubator should be allowed to acquire additional stations above the national ownership limit, in exchange for incubating a woman- or minority-owned station. NPRM at ¶ 19. An exception to, or waiver of, the national ownership rule would be a strong incentive for stations with vast resources to enter into the incubator program, and therefore should be adopted, provided that the exception is carefully crafted to ensure that some meaningful financial, technical and other assistance is provided to the incubatee in return. A waiver process may provide the Commission with the best mechanism for evaluating such proposals, on a case-by-case basis, to ensure that the incubator is providing meaningful support in exchange for a proposed waiver of the national ownership rule.

A holding period, between providing assistance to the incubatee and the incubator acquiring a station under an exception to the national ownership rules, should not be required, since such a limitation would also reduce the incentive for parties to serve as incubators. However, the incubator should be required to make an express representation to the Commission (perhaps in the application to acquire the station which would exceed the limit) that the incubator is providing and will continue to provide assistance to specific women- or minority-owned businesses, and to specify the nature and extent of the assistance provided. The incubator would then be subject to fines, forfeitures or other punitive action by the Commission for any misrepresentation.

The Commission also inquires whether an incubator should be limited to acquiring a station of comparable value, or in the same service, when seeking to exceed the national ownership limits in exchange for incubating a women- or minority-owned station. NPRM at

¶ 23. KM opposes such restrictions, which may unnecessarily limit the pool of potential investors that may be willing to serve as incubators, and which may also limit the very potential investors that have the requisite resources to serve as incubators. Regardless of the facilities acquired by the incubator, the women- or minority-owned business would receive meaningful assistance, creating opportunities for increased women and minority ownership.

IV. Modification of The Attribution Rules.

KM supports the proposed modification of the attribution rules, which would assist women and minorities in raising capital. Specifically, KM supports the adaptation of the "designated entities" rules adopted for determining eligibility for Personal Communications Services ("PCS") licenses in the C and F blocks. See, e.g., 47 C.F.R § 24.709. The PCS attribution rules appear to have achieved an appropriate balance between maintaining ownership and control by the women- or minority-owned business and attracting the desired investment and other support from parties that would hold only non-attributable interests.

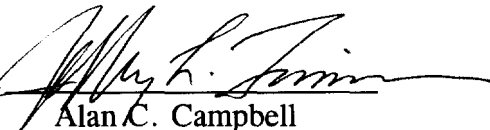
V. Local Ownership Limits.

The Commission proposed to allow minority-controlled entities to own up to three AM and three Class A FM radio stations in any market with at least fifteen stations, subject to a combined audience share limitation of thirty percent. NPRM at ¶ 36. KM supports this proposal, which may allow minority-controlled to achieve the critical mass necessary to be successful in the mass media market, while providing adequate safeguards to prevent excessive concentration in any given market.

VI. Conclusion.

KM respectfully requests that the Commission consider the demonstrated relationship between minority ownership of mass media facilities and diversity of programming, and adopt rules which encourage opportunities for increased women and minority ownership in the mass media industry. Specifically, KM urges the Commission to adopt incubator program, ownership attribution and other rules which would promote increased women and minority ownership, thereby promoting increased diversity in programming.

Respectfully submitted,
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